

**Notice of Allowability**

Application No.

10/822,843

Examiner

Karen E. Toth

Applicant(s)

HAYANO ET AL.

Art Unit

3735

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the response to restriction requirement filed 2 May 2006.
2. ☒ The allowed claim(s) is/are 9-13.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date 4/13/04 | 7. <input type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                       | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|  | 9. <input type="checkbox"/> Other _____.   |

### **3DETAILED ACTION**

#### ***Election/Restrictions***

1. Applicant's election with traverse of Invention II in the reply filed on 2 May 2006 is acknowledged. The traversal is on the ground(s) that the subject matter of all inventions is sufficiently related that a thorough search for one group would encompass a search for the subject matter of the remaining groups. This is not found persuasive because the non-elected group comprises stimulation to induce or inhibit endothelium-derived relaxing factors as part of methods to assess function, while endothelium-derived relaxing factors are not induced or inhibited in any way by the structure of the elected group

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1-8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2 May 2006.

#### **EXAMINER'S AMENDMENT**

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

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Authorization for this examiner's amendment was given in a telephone interview with Dan Tanner on 28 June 2006.

Claims 1 through 8 have been cancelled.

In claim 9, in order to eliminate antecedent basis issues, line 7 has been changed from "for measuring successively said first" to --for measuring successively a first--; line 11 has been changed from "through the artery in the first" to --through the artery in a first--; lines 13-14 have been changed from "information which is said" to --information which is a--; line 15 has been changed from "the artery in the second" to --the artery in a second--; lines 17-18 have been changed from "for calculating the pre-ischemic" to --for calculating a pre-ischemic--; line 23 has been changed from "calculating the post-ischemic" to --calculating a post-ischemic--.

In claim 12, line 2, "any of" has been deleted for grammatical clarity.

In claim 13, line 2, "any of" has been deleted for grammatical clarity. Also in claim 13, in order to eliminate antecedent basis issues, line 8 has been changed from "simultaneously the third" to --simultaneously a third--; lines 10-11 have been changed from "information at the specified" to --information at a specified--; line 12 has been changed from "and the fourth" to --and a fourth--; lines 14-15 have been changed from "information at the fourth" to --information at a fourth--; line 21 has been changed from "respectively the pre-ischemic" to --respectively a pre-ischemic--; line 26 has been changed from "apparatus and post-ischemic" to --apparatus, and a post-ischemic--.

***Allowable Subject Matter***

4. The following is an examiner's statement of reasons for allowance:

The prior art of record fails to anticipate or make obvious the structure of Claims 9-13 including, *inter-alia*, a structure for assessing vascular endothelial function comprising measuring pulse wave conduction velocity from symmetrical points on a patients body both before and after inducing ischemia, and calculating ratios between the two pre-ischemic measurements and the two post-ischemic measurements.

Ogura (6440079) discloses an apparatus for determining a blood pressure index where pulse wave measurements are taken from symmetric points on a patient's body using structures capable of inducing ischemia (column 3, lines 28-32), and ratios are calculated between measurements (column 3, lines 34-40). However, the ratios are each determined by comparing the pre- and post-ischemic measurements from the same side of the body (column 4, lines 16-18).

***Conclusion***

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen E. Toth whose telephone number is

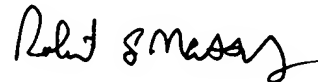
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571-272-6824. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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ROBERT L. NASSER  
PRIMARY EXAMINER